

AFR

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 11th day of December, 2002.

Original Application No. 1125 of 2000.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.

Gaya Deen Sharma, a/a 80 years S/o Late Shiv Mangal
R/o 125/66-E, Ram Nagar, Nai Basti, Naini, Allahabad.

.....Applicant

Counsel for the applicant :- Sri Rakesh Verma

V E R S U S

1. Union of India through the Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway,
Baroda House, New Delhi.
3. The Divisional Railway Manager,
Northern Railway, Lucknow.

.....Respondents

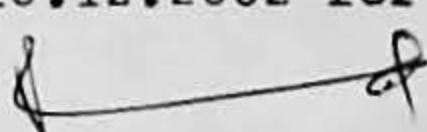
Counsel for the respondents :- Sri A.K. Gaur

O R D E R

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A applicant has prayed for payment of interest @ 18% per annum on the amount of Rs.1,75,552/- for the period 12.05.1998 to 19.10.1999.

2. In this case, notice was issued on 17.10.2000 granting six weeks time to respondents to file counter reply. However, counter was not filed. On 16.05.2001, four weeks time was again allowed to file counter but counter could not be filed by the respondents. Then on 27.07.2001, four weeks time was further allowed by stop-order. However, counter has not been filed. As no counter has been filed, the case was adjourned on 10.12.2002 for being taken today.



Sri A.K. Gaur, learned counsel for the respondents has filed an objection today against the maintainability of this O.A. Objection is taken on record.

3. The facts, in short, giving rise to this O.A are that applicant was serving as Driver in Northern Railway. He retired from service on 31.01.1977. As he was serving as Driver, he was entitled for running allowance to the extent of 75% as the position stood on the date applicant retired. However, Railway Board reduced this running allowance from 75% to 55% by order dated 05.12.1988 w.e.f 01.01.1973. Taking advantage of this order the applicant's pension was calculated with the running allowance of 55%. The Railway Board's order dated 05.12.1988 was, however, challenged in this Tribunal. The Full Bench of this Tribunal, in case of C.R. Rangadhamaiya and 770 ors. Vs. Chairman, Railway Board, Rail Bhawan, New Delhi and 8 ors. reported in Full Bench Judgment of Central Administrative Tribunal 1991-1994 Vol. 3 (265), The Full Bench held that amendment dated 05.12.1988 will not operate retrospectively. The Full Bench judgment was delivered on 16.12.1993. Full Bench judgment of this Tribunal was challenged before Hon'ble Supreme Court by the respondents. However, Hon'ble Supreme Court upheld the view taken by the Full Bench of this Tribunal. The applicant, however, was not paid the pension adding 75% of the basic pay, he filed O.A No. 1006/95 which was allowed on 15.10.1997 with following direction :-

" As there is no dispute that the applicant had retired prior to the issuance of the amendment letter, he will also be entitled to get his retiral benefits calculated after taking into account 75% of the running allowance as element of basic pay. The O.A is accordingly disposed of with the direction to calculate the retiral



benefits of the applicant accordingly and to pay him current pension as well as arrears on that basis. Parties shall bear their own costs. Let the aforesaid directions be complied with within a period of six months from the date of communication of this order."

4. The applicant's case as stated in para 4.6 is that order of this Tribunal dated 15.10.1997 was served on respondent No. 3 vide letter dated 07.11.1997 which was received by him on 11.11.1997. It is submitted that six months period thus was to be calculated from 11.11.1997 which expired on 11.05.1998. As the amount was not paid within six months, the applicant filed contempt petition No. 56/1998. The opposite party impleaded in contempt petition was K.K. Pandey, the then Divisional Railway Manager, Northern Railway, Lucknow. The notice was issued on 16.02.1999. During the pendency of contempt petition respondent No. 3 complied the order of this Tribunal dated 15.10.1997 and paid the amount in pursuance of the order of this Tribunal to the tune of Rs. 1,75,522/- to the applicant on 19.10.1999. As the amount was paid during the pendency of contempt petition, contempt petition was dismissed on 15.05.2000. Now this O.A has been filed on 29.09.2000 claiming interest on the amount of Rs. 1,75,522/- for the period 12.05.1998 to 19.10.1999 i.e. period of one year and five months.

5. As counter affidavit has not been filed, the facts stated above are uncontroverted and are accepted to be correct for passing this order. The facts ~~are~~ also find supported from other material available on record.

6. Sri A.K. Gaur, learned counsel for the respondents has raised objection that this O.A is not legally maintainable as the claim is barred under Order 2 Rule 2 C.P.C. Reliance has been placed on the judgment of

Hon'ble Supreme Court in case of Commissioner of Income Tax, Bombay Vs. T.P. Kumaran 1997 SCC (L&S) 135. It has been further stated that there is no direction in the order dated 15.10.1997 for paying the interest and the applicant cannot claim for interest on the amount paid to him. Learned counsel has further submitted ^{that} ~~as this~~ Tribunal ^{is being} proceeded ex parte against the respondents, ~~the~~ heavy burden lay on the applicant to prove his case and the case cannot be accepted merely on the ground that CA has not been filed. Lastly, it has been submitted by the learned counsel for the respondents that as the applicant ~~had~~ filed contempt petition No. 56/1998 which was dismissed on 15.05.2000, this application is not maintainable as the Tribunal ^{at present} ~~has~~ found that the order has been complied with.

7. Sri Rakesh Verma, learned counsel for the applicant on the other hand has submitted that by means of this application under section 19 of the Administrative Tribunals Act, 1985, applicant has claimed interest for the period which was not subject matter of consideration before this Tribunal in O.A No. 1006/1995 which was decided on 15.10.1997. The cause of action is entirely different and new which arose when the period of six months ^{and amount was not paid to applicant} granted by the Tribunal ~~was~~ expired. It is submitted that the applicant, in the circumstances, is entitled for the interest. It has also been submitted that the applicant retired on 31.01.1977. The applicant was not paid any interest on the amount. There was no justification on the part of the respondents to delay the payment after the expiry of six months initially allowed by this Tribunal. Reliance has been placed by the learned counsel for the applicant on the judgment of this Tribunal in case of Bhoot Nath Pal Vs. U.O.I and Ors. 1990 (13) A.T.C 339. Reliance has also been placed on unreported judgment

dated 07.02.2002 passed in O.A No. 1124/2000 Ram Padarath Singh Vs. U.O.I and Ors.

8. I have carefully considered the submissions of counsel for parties.

9. There is no dispute on facts that the applicant retired on 31.01.1977. He was not paid retiral benefits calculating 75% of the basic pay as running allowance on account of the controversy raised in respect of the order dated 05.12.1988 of the Railway Board which reduced the amount from 75% to 55%. The controversy ultimately was settled by the Full Bench of this Tribunal which was confirmed by the Hon'ble Supreme Court that the order dated 05.12.1988 will not apply retrospectively. The judgment of Full Bench was delivered on 16.12.1993 which was confirmed by the Hon'ble Supreme Court on 25.07.1997. The respondents were under legal obligation ^{to pay the amount which was legitimate} to the persons who retired before 05.12.1988. However, the amount was not paid and the applicant was compelled to file O.A No. 1006/95. The Tribunal while deciding the O.A No. 1006/1995 directed to pay the amount due to the applicant within period of six months from the date of communication of the order, ^{Admittedly,} amount was not paid within period allowed by this Tribunal. Then applicant had filed contempt petition No. 56/1998. During the pendency of that contempt petition, most likely, under pressure created by pendency of contempt petition, amount was paid to the applicant on 19.10.1999. The delay is of one year five months , seven days.

10. The question for determination in this O.A is whether the applicant is entitled for interest for the period 12.05.1998 to 19.10.1999 i.e. ^{for} period of one year

ef

five months seven days and, if so, then at what rate. There is no material on record filed by the respondents to justify the delay. Cases cannot be ruled out ~~where~~ for bonafide reasons delay may be caused in paying the amount, but the reasons for such delay ought to have been placed before this Tribunal, so that cause for delay be appreciated. Unfortunately, in this case no such attempt has been made. Sufficient opportunity was granted to file counter reply but the same could not be filed during the period of two years. Learned counsel for the respondents has submitted that as the contempt petition was dismissed by this Tribunal on 15.05.2000, this O.A is not maintainable. However, I am not impressed by this submission. The liability for punishment under contempt petition is for wilful disobedience of the order. As the order was complied with, the Tribunal did not find it fit to punish the respondent merely on the ground of delayed payment. That was the liability under special law of contempt. The civil liability of the respondents for withholding the amount of the applicant for the period of one year five months and seven days illegally continued for which they have not given any justification. The submission of learned counsel for the respondents that this O.A is barred by Order 2 Rule 2 of C.P.C and payment of interest was not directed in the Tribunal's order dated 15.10.1997, hence it cannot be claimed by filing the present O.A, are also not acceptable. The cause of action in the present O.A is new and different. It arose only after the judgment of this Tribunal was given and when the judgment was not complied with within the time ^{fixed} framed by it.

11. Learned counsel for the respondents has also submitted that if such a view is taken, it will have serious repercussions and the respondents shall be liable to pay amount in every case of delayed payment. I have seriously considered this submission. However, it does not

appear that such view is ^{being} taken for the first time. A Division Bench of this Tribunal in case of Bhoot Nath Pal Vs. U.O.I and Ors. (Supra) has already taken the view that the applicant in that case was entitled for interest on delayed payment. Delay in that case was ^{more than} a year, though Tribunal had granted only two months time. The interest awarded was at the rate of 12% per annum. Similar view was taken by this Tribunal in case of Ram Padarath Singh Vs. U.O.I and Ors. (Supra). The relevant para of the order is being reproduced below :-

"It is thus, obvious that there is no dispute about the payment of pension having been made by the respondents after one year and five months beyond the period of six months granted by this Tribunal. We are not convinced from the arguments advanced by the learned counsel for the respondents that the applicant is not entitled for payment of interest as the delay was caused due to procedural and processing of file etc. The learned counsel for the respondents further states that the applicant had filed a contempt petition before this Tribunal seeking enforcement of the order. Hence, there was no justification on the part of the respondents to cause delay in payment of pension."

12. This Tribunal allowed interest at the rate of 12% for the period from 18.05.1998 to 25.10.1999 i.e. the period of delayed payment. Similar circumstances are involved in the present case.

13. From the discussion made above, it is clear that there was delay of one year five months/ seven days in paying the amount for which there is no justification on record. In the legal position as stated above the applicant is entitled for the relief.

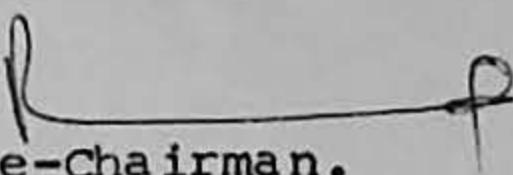


::8::

14. Sri A.K. Gaur, learned counsel for the respondents however, submitted that the rate of interest has been reduced and the applicant is not entitled for the interest @ 18% as claimed in this O.A. The prevailing rate of interest when the O.A was filed was 10%.

15. For the reasons stated above this O.A is allowed. The respondents are directed to pay interest at the rate of 10% per annum on the amount of Rs. 1,75,552/- for the period 12.05.1998 to 18.10.1999. The amount shall be paid within three months from the date a copy of this order is filed.

16. There will be no order as to costs.


Vice-Chairman.

/Anand/